



PCB Manifesting and Notification Rule

BACKGROUND: The Environmental Protection Agency (EPA) published a *Federal Register (FR)* notice on December 21, 1989, which established requirements for all facilities generating polychlorinated biphenyl (PCB) waste to track the disposal process in a manner similar to the "cradle-to-grave" system of the Resource Conservation and Recovery Act (RCRA). The final rule became effective on February 5, 1990, and was amended on June 29, 1998 (63 *FR* 35384). As part of the EH-413 response to the initial final rule, a series of questions were posed to EPA requesting clarification on the impact of the rule to Department of Energy (DOE) facilities storing PCB waste. This Information Brief will review the final rule and the EPA response to the request for clarification, some of which has been codified in the final rule as amended.

STATUTE: Toxic Substances Control Act (TSCA)

REGULATION: 40 Code of Federal Regulations (*CFR*) Part 761

REFERENCES: Final rule: 54 *FR* 52716, December 21, 1989; Correction: 55 *FR* 26204, June 27, 1990; EH-231 Memorandum, February 5, 1990, subject: PCB Notification and Manifesting Final Rule; EH-231 Letter to EPA, February 16, 1990, subject: Clarification on PCB Final Rule; EPA Letter to EH-231, August 2, 1990, subject: Response to Request for Clarification on PCB Final Rule; Final Rule: 63 *FR* 35384, June 29, 1998.

TSCA regulations require generators of PCB waste to notify EPA of their activities and to implement a manifest system for tracking disposal of PCB waste. The regulations also require commercial storers of PCB waste to obtain EPA approval for such storage and to develop closure plans. [40 *CFR* Part 761.65(d)].

DEFINITIONS (40 *CFR* Part 761.3)

Distinction Between Facility and Unit

"Facility" means all contiguous land, structures, other appurtenances, and improvements on the land, used for the treatment, storage, or disposal of PCB waste. A facility may consist of one or more treatment, storage, or disposal units.

"Unit" means a particular building, structure, or cell used to manage PCB waste (including, but not limited to, a building used for PCB waste storage, a landfill, an industrial boiler, or an incinerator).

Why did EPA decide to distinguish between facility and unit?

EPA distinguished between facility and unit because EPA did not intend to require a separate notification

of PCB waste handling activity for each PCB storage unit on a contiguous piece of property. Therefore, in the PCB Disposal Amendments, EPA introduced new definitions for *"facility"* (a contiguous piece of property containing many units) and *"unit"* (an individual structure or building use to store, dispose, or otherwise manage PCBs). Only a single notification is required for each facility, making the notification requirement consistent with that for RCRA.

Clarification of the Definition of Generator

"Generator of PCB waste" means any person whose act or process produces PCBs that are regulated for disposal under Subpart D of this Part [40 *CFR* Part 761], or whose act first causes PCBs or PCB items to become subject to the disposal requirements of Subpart D of this Part, or who has physical control over the PCBs when a decision is made that the use of the PCBs has been terminated and therefore is subject to the disposal requirements of Subpart D of this Part. Unless another provision of this Part specifically requires a site-specific meaning, "generator of PCB waste" includes all of the sites of PCB waste generation owned or operated by the person who generates PCB waste.

Is the generator of a PCB waste the same as the owner of the PCB or PCB Item from which the waste originated?

Not necessarily. The following scenario provides an example. A site sends a PCB Article to a vendor for repair, and the vendor finds that the article cannot be repaired. The site then asks the vendor to dispose of the article. In this case the vendor becomes the generator of PCB waste, although the site owns the PCB waste.

In the situation of a spill, how are the owner and generator distinguished?

When the owner of a PCB or PCB Item causes a spill or release from the PCB or PCB Item, there is no distinction between owner and generator of waste resulting from the spill. However, when a second party (e.g., a storer) is involved, the storer is generally responsible for a spill or release at a unit storing a PCB or PCB Item even though the PCB or PCB Item may be owned by another person. Consequently, the storer is the generator and owner of the PCB waste (e.g., soil and concrete contaminated with PCBs), as the result of a spill or release from a PCB or PCB Item placed in a storage unit.

Clarification of Definition of “Commercial Storer”

“*Commercial storer of PCB waste*” means the owner or operator of each facility that is subject to the PCB storage unit standards of Sect. 761.65(b)(1) or (c)(7) or meets the alternative storage criteria of Sect. 761.65(b)(2), and who engages in storage activities involving either PCB waste generated by others or that was removed while servicing the equipment owned by others and brokered for disposal. . . . A generator who only stores its own waste is subject to the storage requirements of Sect. 761.65, but is not required to obtain approval as a commercial storer. If a facility’s storage of PCB waste generated by others at no time exceeds 500 gallons of liquid and/or non-liquid material containing PCBs at regulated levels, the owner or operator is a commercial storer but is not required to seek EPA approval as a commercial storer of PCB waste. Storage of one company’s PCB waste by a related company is not considered commercial storage. A “related company” includes, but is not limited to: . . . entities within the same Executive agency as defined at 5 U.S.C. 105.

Is a DOE facility which receives PCB waste from off-site DOE activities considered a commercial storer of PCB waste?

No, as codified in the 1998 final rule, DOE facilities receiving waste from off-site DOE activities (i.e., “entities within the same Executive agency”) by def-

inition are receiving it from a “related company” and, therefore, will not be considered to be commercially storing PCB waste. However, it is important to note that while the facility may not be a commercial storer of PCB waste subject to 40 CFR Part 761.65(d), it must still meet the storage facility standards in 40 CFR Part 761.65(a)-(c), where applicable.

Is a DOE facility which receives PCB waste from federal facilities other than DOE considered a commercial storer of PCB waste?

The answer depends on two criteria: (1) whether the federal facility other than DOE is engaged in a DOE activity and (2) whether the amount of non-DOE activity waste received exceeds 500 gallons, liquid or non-liquid. If the PCB waste received from a federal facility other than DOE results from a DOE activity at that federal facility, then it is counted as DOE waste. For example, DOE Orders and Memoranda of Agreement officially recognize the Naval Nuclear Propulsion Program as a joint DOE and Navy activity. Therefore, PCB waste generated by this particular program from a Navy facility may count as PCB waste from a DOE activity when it is stored at a DOE facility. However, a DOE facility receiving PCB waste exceeding 500 gallons, liquid or non-liquid, from a non-DOE activity is required to seek EPA approval as a commercial storer.

Is a DOE-owned, contractor-operated PCB waste storage facility required to have a closure plan when the quantity of PCBs on site exceeds 500 gallons of liquid and/or non-liquid material containing PCBs at regulated levels regardless of whether the DOE facility is considered a commercial PCB waste facility?

In this scenario the only time the DOE-owned, contractor-operated facility would be considered a commercial storer and need to have a closure plan would be when it stores PCB waste exceeding 500 gallons of liquid and/or non-liquid material containing PCBs at regulated levels from a non-DOE activity, as discussed in the answer to the question above.

In addition, according to EPA, while the contractor may be operating the facility, they are operating it under DOE control and oversight, essentially as employees of DOE; therefore, the answers to the questions above apply equally to the contractor. Thus, if the contractor accepts PCB waste exceeding 500 gallons of liquid and/or non-liquid material containing PCBs at regulated levels from a non-DOE activity, DOE is a commercial storer of PCB waste and would need to seek approval as such from EPA and develop a closure plan.

CLARIFICATION OF APPLICABILITY OF MANIFESTING

Why is a material with an existing concentration of <50 ppm of PCBs derived from a pre-April 18, 1978, spill source of >50 ppm of PCBs exempt from manifesting?

The Anti-Dilution Rule was not effective until April 18, 1978.

Why are materials at any existing concentration derived from a pre-July 2, 1979, spill source of <500 ppm of PCBs exempt from manifesting?

Prior to July 2, 1979, PCBs <500 ppm were not regulated.

What do I do about manifesting a contaminated material for which I don't know the date of the spill or the concentration of the spill source of PCBs that caused the contamination?

If you have no proof of the date of the spill or the concentration of the spill source that caused a material to be contaminated with PCBs, assume it is subject to manifesting.

RELATION TO RCRA

For the most part EPA regulates the storage and disposal of PCBs under TSCA section 6(e)(1) authority, rather than under Subtitle C of RCRA, unless the PCB waste also meets the definition of RCRA hazardous waste. However, to better manage PCB waste, EPA has promulgated requirements for a tracking system that is similar to the “cradle-to-grave” tracking system for hazardous wastes under the RCRA Subtitle C program.

SUMMARY

The final rule published in the *Federal Register* on December 21, 1989 (effective on February 5, 1990), was amended as published in the *Federal Register* on June 29, 1998, and was effective on August 28, 1998. It includes the following requirements:

- ❑ The transportation of PCB waste must be properly manifested similar to the “cradle-to-grave” concept of RCRA.
- ❑ Generators must notify EPA of their PCB waste handling activities and any changes in these activities or their facility location.
- ❑ Generators must obtain a unique identification number from EPA.

- ❑ DOE facilities that store PCB waste exceeding 500 gallons from non-DOE activities are considered commercial storage facilities.
- ❑ For purposes of defining “commercial storer,” contractors operating DOE facilities are, in effect, considered employees of DOE and, therefore, what applies to DOE also applies to them.

Questions of policy or questions requiring policy decisions will not be dealt with in EH-413 Information Briefs unless that policy has already been established through appropriate documentation. Please refer any questions concerning the subject material covered in this Information Brief to Beverly Whitehead, RCRA/CERCLA Division, EH-413, (202) 586-6073, or beverly.whitehead@eh.doe.gov.

